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THE
AMERICAN LAW REGISTER
AND
REVIEW.

AUGUST, 1895.

PROGRESS OF THE LAW.

AS MARKED BY DECISIONS SELECTED FROM THE ADVANCE
REPORTS FOR JULY.

Edited by ARDEMUS STEWART.

The Supreme Court of Missouri has recently held that two attorneys should be disbarred, when, after the trial of a cause in which they were engaged, one of them falsified the transcript of evidence furnished by the official stenographer, by removing therefrom the correctly transcribed testimony of material witnesses, and substituting false statements that had not been testified to, and delivered the mutilated transcript to the judge as correct, misleading him into signing and approving the same; and the other, knowing such transcript to be false, prepared upon it an abstract, brief, and printed argument, with intent to deceive the appellate court, and get a reversal of the judgment against his client: *State v. Harber*, 31 S. W. Rep. 889. It was also held that such proceedings might be properly instituted in the supreme court, on relation of the attorney general. But in *State v. Mullins*, 31 S. W. Rep. 744, a case growing out of the same transaction, it was held that the senior counsel, who was not shown to have had any connection with the mutilation of the record, would not be disbarred from arguing the appeal from the record as filed.

Attorneys,
Disbarment,
Alteration of
Record

The Circuit Court for the District of South Carolina has declared the registration laws of that state null and void, holding, in *Mills v. Green*, 67 Fed. Rep. 818, (1.) That a suit brought by a citizen of the United States against the supervisor of registration of a state, charged, under the state statutes, with the duty of superintending the registration of voters, to restrain him from carrying out the provisions of such statutes, on the ground that they violate the constitution of the United States, is not a suit against the state; (2.) That the leading purpose in the adoption of the fourteenth and fifteenth amendments to the constitution of the United States was to secure to persons of African descent the full enjoyment of the privileges of citizenship, including the right to vote; and the courts of the United States have jurisdiction of a suit by such a person against officers of a state to restrain them from acting under a statute of that state, claimed to violate the said amendments to the constitution by abridging or denying such privileges; and (3.) That the statutes of South Carolina relating to the registration of voters, one of which, passed in 1882, (Gen. Stat. 1882, § 90, &c.,) provided that in 1882 a registration of voters should be made, and the registration books closed; that thereafter such books should be open once a month after the general election in each year, until the first of July preceding each general election, (usually held in November,) for the registration of persons thereafter becoming entitled to vote; that, after the closing of the books in each year, persons coming of age before the election might be registered; and that, upon the registration of any voter, a certificate of registration should be given him, without the production of which he should not be allowed to vote, and which, upon removal from one county to another, must be transferred and renewed under onerous conditions; the other of which statutes, passed in 1894, providing for the election of members of a constitutional convention, also provided that a person not registered in 1882, or at a subsequent time when he would have a right to register, might register within a certain time, upon making affidavit, supported by that of two respectable

citizens, as to various particulars of his occupation and residence at the time he might have registered and thereafter;—that these statutes were an unreasonable restriction of the right of suffrage, manifestly designed to prevent the exercise of that right by ignorant persons, especially of the African race, and were a violation both of the constitution of the state and of the fourteenth and fifteenth amendments to the constitution of the United States.

When, in proceedings for contempt in inciting and causing the publication of a criticism of a judge's official action, it appears that the defendant had no agency in the publication, nor knowledge of it, a commitment for contempt is void for want of jurisdiction: *Ex parte Taylor*, (Court of Criminal Appeals of Texas,) 31 S. W. Rep. 641.

The Supreme Court of Illinois has at last wiped out the Whisky Trust, holding, in *Distilling & Cattle-Feeding Co. v. People*, 41 N. E. Rep. 180, (1.) That a trust combination, organized in order to obtain control of the manufacture and sale of distillery products, by buying up the stock of various distillery companies, and placing it in the hands of trustees, is illegal, because it creates a monopoly; (2.) That when such a trust combination is changed into a corporation, organized, owned and controlled by the trustees of the combination, and all the property controlled by the corporation is transferred to the corporation, the latter is also illegal; and (3.) That a corporation authorized by its charter to engage in the general distilling business in the state of its creation and elsewhere, and to own the property necessary for that purpose, has no right to buy up practically all the distillers in the country, so as to acquire a virtual monopoly of the business.

The Supreme Court of New Jersey has recently held, that when the power to condemn lands, conferred upon a corporation by the act by which it is created, is restricted by a proviso that it shall in no case be authorized to condemn and take possession of the land or property of any other corporation existing under

**Corporations,
Eminent
Domain,
Restriction**

the laws of the state, (1.) This restriction is not confined to lands of corporations existing at the passage of the act, but applies to those thereafter incorporated; and (2.) Another corporation, which acquires lands after the first corporation had filed a survey thereof according to the requirements of the laws, but before any petition for the appointment of commissioners had been presented, may claim exemption from condemnation under the proviso: *In re American Transp. & Nav. Co.*, 32 Atl. Rep. 74.

According to a recent decision of the Supreme Court of Indiana, in *Thornburg v. American Straw-Board Co.*, 40 N.

E. Rep. 1062, a man who marries the mother of a bastard child, and receives the child into his home as a member of his family, has no right of action for its death, under a statute, (Rev. Stat. Ind. 1894, § 267,) which provides that a father may sue for the injury or death of a child.

**Death by
Wrongful
Act,
Parent and
Child,
Bastard**

As a general rule, the mother of an illegitimate child cannot recover damages for his death under the statutes giving a right of action to the relatives or representatives of any one killed through the negligence of another: *Gibson v. Midland Ry. Co.*, 2 Ont. 658; *Harkins v. P. & R. R. R. Co.*, 15 Phila., (Pa.) 286; S. C., 11 W. N. C. 120. So, under the Missouri statute, (Rev. Stat. Mo. 1889, § 4425,) giving a right of action to recover damages for the death of any one from an injury resulting from or occasioned by negligence, unskilfulness, or criminal intent, and providing that if the deceased be a minor and unmarried, whether such deceased unmarried minor be a natural-born or adopted child, then the father and mother may join in the suit, and each shall have an equal interest in the judgment, it was held by the Circuit Court for the Southern District of Ohio, Western District, that the interest so given extended only to the case of natural-born legitimate children, and that no action could be maintained by a mother for the death of her bastard child: *Marshall v. Wabash R. R. Co.*, 46 Fed. Rep. 269; but the Supreme Court of Missouri, Division No. 1, in *Marshall v. Wabash R. R. Co.*, (Mo.) 25 S. W. Rep. 179, held, that under

this same statute the mother could sue for the wrongful killing of her bastard child, when a minor and unmarried, and that without joining the father of the child as a plaintiff. This decision is rested expressly on the ground that by the statutes of Missouri the want of inheritable blood is removed, on the mother's side ; and this incapacity being removed so far as she is concerned, there seems to be no good reason why a statute which speaks of parents and children should not apply to a mother and her illegitimate child, unless there is something to show that that application was not intended.

Although the Supreme Court of South Carolina, as at present constituted, is unreliable on questions of purely local interest, such as the Dispensary and Registration of **Divorce, Conflict of Laws** laws, it nevertheless displays a great deal of acumen on matters of general jurisprudence. It is almost the only court that has refused to be misled by the specious arguments and daring assumptions of the would-be authorities who would have us believe that the marriage state is an eleventh incorporeal hereditament, which escaped the argus eyes of Mr. Blackstone, to be discovered by the microscopic search of Messrs. Bishop, Black and Freeman, who, like the Athenians, are always eager to hear, or to tell, some new thing, as becomes the writers of successful books. In *McCreery v. Davis*, 22 S. E. Rep. 178, the court aforesaid, in a long and able opinion by Judge POPE, discusses the whole question, and arrives at these conclusions ; (1.) That marriage is a civil contract, and not a *res* or *status* ; (2.) That the common law doctrine of divorce prevails in South Carolina ; and (3.) That when a citizen of South Carolina, married in New York to a citizen of that state, resided with his wife in South Carolina, until she left him and went to Illinois, where she obtained a divorce according to the laws of Illinois, without personal service on or appearance of her husband, on a ground of divorce not recognized as cause for divorce in New York or South Carolina, the Illinois judgment is void in South Carolina ; for Art. IV, § 1, of the United States constitution, which provides that full faith and credit shall be given in each state

to the judicial proceedings of every other state, and the act of Congress, (1 Rev. Stat. U. S. § 905,) which provides that records and proceedings thereof, properly authenticated, shall have such faith and credit given them in every court of the United States as they have in the state whence they may be taken, do not prevent an inquiry into the jurisdiction of the court which renders the judgment.

We may be pardoned for quoting a portion of the argument by which Judge POPE assails, and shatters, the position of those who would hold that marriage creates a *status* between the parties, which, like greenbacks, may be converted into a *res* for the purposes of social economy. "Is it not an assumption coined in order to give a plausible basis to the solution of an otherwise untenable position? Is it not by this means that they hope to give currency to an otherwise baffled policy, namely, to so construct a plan that thereby they may successfully invoke that portion of the federal constitution relating to the effect to be given by all the states to the acts and judgments of one state, and thus force all other states to give effect to judgments for absolute divorces? If marriage were still esteemed a civil contract, they could not hope to escape the defect of jurisdiction hereafter discussed. But by coining this new term '*status*,' and ascribing the efficacy of '*res*' to it, under certain principles hereafter to be referred to, it is deemed by them that the difficulty has been overcome." In short, there is no legal authority for making the condition of marriage a "*status*," or for investing that condition with the properties of an incorporeal hereditament, which a "*res*" must be, if it is anything not tangible; but such is an assumption pure and simple, designed for the easy gratification of the lust of the flesh, and the emolument of those courts which serve other states in the matter of divorce as in marriage affairs Camden once served Pennsylvania, and Gretna Green England. That is, it is an utterly illegal assumption, without a shadow of excuse, except that of the evil it produces. This is also the law of New York, where it is held that the marriage relation is not a *res* within the state of the party invoking the jurisdiction of a court to dissolve it, so as to authorize

the court to bind an absent party, a citizen of another state, by substituted service or actual notice given without the jurisdiction of the court where the action is pending; and that therefore a judgment of divorce rendered in another state against a resident of New York, when there has been no personal service of process within the state rendering it, and no personal appearance by the defendant in the action, is void in New York: *Williams v. Williams*, 130 N. Y. 193; S. C., 29 N. E. Rep. 98; *Davis v. Davis*, 22 N. Y. Suppl. 191; S. C., 2 Misc. Rep. 549; and in Pennsylvania, where the same rule obtains: *Lewis v. Lewis*, 6 Kulp (Pa.) 429; *Commonwealth v. Steiger*, 12 Pa. C. C. 334; S. C., 2 D. R. (Pa.) 493; *Commonwealth v. Shuler*, 2 D. R. (Pa.) 552. It is still the rule in England: *Green v. Green*, [1893] Prob. 89.

In the opinion of the Supreme Court of Nebraska, a mortgage given to secure a debt will not be set aside as procured by duress, on the ground that it was given to obtain a dismissal of criminal proceedings instituted by the creditor against the mortgagor, when the mortgage was given without threats or promises having been made to the mortgagor, and after a statement by the creditor's agent that no promise could be made, but, on the contrary, that the prosecution would have to take its course: *Hargreaves v. Menken*, 63 N. W. Rep. 951. See 1 AM. L. REG. & REV. (N. S.) 885.

In *Hanscom v. State*, 31 S. W. Rep. 547, the Court of Civil Appeals of Texas has been called upon to pass upon some of the apparently endless series of disputes as to the validity of ballots under the Australian Ballot Laws. The Revised Statutes of that state, Art. 1694, provide that "All ballots shall be written or printed on plain white paper, without any picture, sign, vignette, device or stamp mark, except the writing or printing in black ink or black pencil of the names of the candidates and the several

offices to be filled, and except the name of the political party whose candidates are on the ticket ; " and this was held not to require the rejection of a ballot on which the voter has written his name, nor one on which the election officers have indorsed their initials, nor those on which the names of candidates not voted for are stricken out with a pencil, or on which certain letters or figures are written, or on which the same number is written twice.

The act of Texas of April 12, 1892, p. 18, §§ 26 & 27, provides as follows : " Sec. 26. Not more than one person

**Assisting
Voters** shall at one time be permitted to occupy any one compartment or place provided for electors to prepare their ballots, except when an elector is unable to prepare his ballot he may [be] accompanied by the two judges to assist him, and no person shall remain in or occupy such compartment longer than may be necessary to prepare his ballot.

" Sec. 27. Any elector who declares to the presiding officer that he cannot read or write, or that by blindness or other physical disability he is unable to prepare his ballot, shall upon request receive the assistance of two of the judges in the preparation thereof."

Under these sections it was held, in the case cited above, (1.) That the fact that such voters are assisted in preparing their ballots by one judge only is no ground for rejecting the ballots, in the absence of fraud, as the statute does not provide for their rejection ; (2.) That the fact that a judge of election, who, before his appointment, received money from a candidate, and advocated his cause at the polls, prepared the ballot for a voter in the interest of that candidate, does not invalidate it ; and (3.) That when a voter who can read, intending to vote for one person, directs a judge of election to prepare a ballot according to a " guide " given to the judge by the voter, the fact that the vote is afterwards found to be for another will not cause its rejection for fraud, if it does not appear whether it was due to the design of the judge, or to a mistake in the " guide. "

According to the Supreme Court of Missouri, the grant to an illuminating company of the right to make and distribute gas, and any substance that might thereafter be used as a substitute therefor, and to lay down any fixtures required therefor, having been made when electric lighting was unknown, does not include the right to adopt any method for distributing electricity for lighting, but that right must be exercised according to the regulations prescribed by law; and, when the power to regulate the use of the streets has been delegated to a municipality before the company adopted electricity for lighting purposes, it must conform to the regulations prescribed by the municipal authorities: *State v. Murphy*, 31 S. W. Rep. 594.

In a recent case in the Supreme Court of Alabama, *Smith v. Smith*, 17 So. Rep. 680, a mortgage had been given by a partnership to the sureties on an administrator's bond, as security for a loan made by the administrator to the firm, and also for the benefit of the heirs. A bill to foreclose the said mortgage, in which the heirs were complainants, and the administrator and his sureties, the firm, the attaching creditors of the firm, and the sheriff, were respondents, alleged that the creditors, proceeding separately, attached the mortgaged property; that part thereof was sold by the sheriff, and the proceeds appropriated by the creditors; and that the sheriff sold a mortgaged lot, and gave a conveyance thereof. The bill prayed for foreclosure, that the administrator account, that the administration be removed into the chancery court, and that the sheriff's deed be canceled. This was held not to be multifarious, nor bad on account of a misjoinder of parties defendant.

The Circuit Court for the District of West Virginia has also lately ruled, in *Ulman v. Jaeger*, 67 Fed. Rep. 980, that in a bill and cross-bill for partition between tenants in common of a tract of land, it is proper to join as defendants numerous purchasers of a part of the land at a tax sale, for the purpose of canceling their deeds, on the ground that the tax proceed-

ings were invalid, and such a joinder will not render the bills multifarious.

Wires and insulators, used in forming and completing the connection between an electric light and power plant and the dwellings, stores and other public places supplied by that plant, for the purpose of conveying or transmitting light and heat thereto, are fixtures, within the provisions of the mechanic's lien law: *Hughes v. Lambertville Electric Light, Heat & Power Co.*, (Court of Chancery of New Jersey,) 32 Atl. Rep. 69.

To the same effect is *Badger Lumber Co. v. Marion Water Supply, Electric Light & Power Co.*, 48 Kans. 182; S. C., 29 Pac. Rep. 476; and the same is true of the pipes used by a corporation to convey vapor used for cold storage from its plant to its customers: *Steger v. Arctic Refrigerating Co.*, (Tenn.) 14 S. W. Rep. 1087. See 2 AM. L. REG. & REV. (N. S.), 431.

In *Beard v. United States*, 15 Sup. Ct. Rep. 962, the Supreme Court of the United States has reasserted a very salutary principle of the law of homicide which some courts occasionally seem to forget, viz.: That if the accused does not provoke an assault, and at the time has reasonable ground to believe, and does believe, that his assailant intends to take his life, or to do him great bodily harm, he is not obliged to retreat, nor consider whether he can safely retreat, but is entitled to stand his ground, and meet any attack made upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he at the moment honestly believes, and has reasonable grounds to believe, is necessary to save his own life, or to protect himself from great bodily injury.

To substantially the same effect is *Page v. State*, (Supreme Court of Indiana,) 40 N. E. Rep. 745.

The Queen's Bench Division of England has recently decided,

that when a commercial traveler, who traveled for the plaintiffs, went in the course of their business to stay at a certain inn, and while there received certain parcels of goods, sent him by the plaintiffs for sale in the district, the innkeeper had a lien on the goods, on the failure of the traveler to pay for his board and lodging in the inn, although at the time they were received he knew them to be the goods of the plaintiff, and not of the traveler: *Robins & Co. v. Gray*, [1895] 2 Q. B. 78.

The question of knowledge was held to be immaterial in this case, because "the goods in question were of a kind which a commercial traveler would in the ordinary course carry about with him to the inns at which he put up as part of the regular apparatus of his calling, and which the innkeeper would consequently be bound to receive into his inn and to take care of while they were there. Here it is true that the goods were not brought by Green to the inn—they were sent to him while he was staying there. But that can make no difference. The defendant was bound to receive them and take care of them as a part of his duty towards his guest. It follows that the lien attached to them."

The Circuit Court of Appeals, Third Circuit, has lately held, in *The London Assurance v. Companhia de Moagens do*

Barreiro, 68 Fed. Rep. 247, affirming 56 Fed. Rep. 44, (1.) That an exception in the words,

Insurance, Marine, Collision "Free of particular average unless the vessel be sunk, burned, stranded, or in collision," ceases to operate as soon as a collision has occurred; and the insurer is liable for subsequent loss, whether the same resulted from the collision or not; and (2.) That there is a "collision," within the meaning of the above exception, when the vessel, after being completely loaded and casting off her moorings, is made fast again to the wharf, because of a difficulty with her engines, and is there run into by a scow, in tow of a tug-boat, which made a substantial break in her bulwarks.

The legislature of South Carolina has received another setback at the hands of the Circuit Court for that district, which

Intoxicating Liquors, Dispensary Law has recently declared the notorious Dispensary Law of that state, which prohibits citizens of the state from bringing into it, for their own use, alcoholic liquors purchased in other states, and directs the seizure and confiscation of such liquors, but provides for the purchase of such liquors, either in or out of the state, by state officials, and for their sale by such officials, to be unconstitutional, holding, in *Donald v. Scott*, 67 Fed. Rep. 854, where a citizen of South Carolina had purchased in other states, and imported, for his own use, certain alcoholic liquors, which were seized by the state constables, acting under the dispensary law; and then filed a bill in the federal court for an injunction to restrain the constables from continuing their interference with his importation of alcoholic liquors, alleging that the dispensary law was an interference with interstate commerce, and in contravention of the acts of congress relating thereto, (1.) That such a suit is not a suit against the state; (2.) That the suit involved a federal question, and was within the jurisdiction of the courts of the United States; (3.) That so far as the dispensary law prohibited citizens of the state from purchasing alcoholic liquors, for their own use, in other states, and importing them into the state, it was a discrimination against the products of other states and the citizens of such states not patronized by the state officials of South Carolina, and was void as an interference with interstate commerce: and (4.) That it could not be justified as an exercise of the police power.

It is libelous to falsely publish of one that he "would be an anarchist if he thought it would pay," when explained by **Libel, "Anarchist," Innuendoes** innuendoes to mean that plaintiff, for a money consideration, would engage in the unlawful, treasonable and felonious designs of anarchists, and that an anarchist is a person who, actuated by mere lust of plunder, seeks to overturn by violence all constituted forms and institutions of society and law and order, and all rights of property: *Lewis v. Daily News Co. of Cumberland*, (Court of Appeals of Maryland,) 32 Atl. Rep. 246.

According to a recent decision of the same court in an action for malicious prosecution, (1.) It is proper to refuse to permit the foreman of the grand jury, who has testified that the criminal prosecution against the plaintiff was dismissed, to state why it was dismissed, as his testimony merely proves that the prosecution is at an end, and has no bearing on the question of probable cause; and (2.) That evidence that the criminal prosecution was dismissed at the instance of the defendant, without the plaintiff's knowledge, is irrelevant, either in bar of the suit, or in mitigation of damages: *Owens v. Owens*, 32 Atl. Rep. 247.

In *Gwilliam v. Twist*, [1895] 2 Q. B. 84, the Court of Appeal of England has reversed the judgment of the Queen's

Bench Division, [1895] 1 Q. B. 557. [See 2 AM. L. REG. & REV. (N.S.) 288.] In that case, while the defendants' omnibus was being driven by their servant, a policeman, thinking the driver was drunk, ordered him to discontinue driving. The omnibus was then only a quarter of a mile from the defendants' yard; and the driver and the conductor authorized a person who was standing by to drive the omnibus home. That person, through his negligence in driving, injured the plaintiff; but it was held that, as the defendants might have been communicated with, there was no necessity for their servants to employ another person to drive the omnibus home, and the defendants were not liable for the negligence of the person so employed. It was also queried whether, if there had been such a necessity, the defendants would have been liable.

In *Robb v. Green*, [1895] 2 Q. B. 1, recently decided by the Queen's Bench Division of England, the defendant, while

employed by the plaintiff as manager of his business, secretly copied from his master's order-book a list of the names and addresses of his customers, with the intention of using it for the purpose of soliciting orders from them after he had left the

**Malicious
Prosecution,
Dismissal of
Prosecution
by Defendant**

**Master and
Servant,
Employment
of Substitute
by Servant,
Agent
of Necessity**

**Improper
Use of Infor-
mation
obtained dur-
ing Service,
Liability**

plaintiff's service and set up business on his own account. Subsequently, his service with the plaintiff having terminated, he did so use the list ; and it was held, on trial without a jury, that it was an implied condition of the contract of service that the defendant would not use, to the detriment of the plaintiff, information to which he had access in the course of the service, and that the defendant was therefore liable in damages for any loss caused to the plaintiff by reason of the breach of that condition.

In *Merryweather v. Moore*, [1892] 2 Ch. 518, the defendant, upon completing a term of apprenticeship with the plaintiffs, a firm of engine-makers, was retained in their employment as a paid clerk, but subsequently left their service for that of another firm of engine-makers. Two days before leaving the plaintiffs' service he compiled for his own purposes, and without their consent, a table of dimensions of various types of engines made by them, and had this table in his possession when he entered the service of his new employers, who subsequently exposed for sale an engine which, it was affirmed on one side and denied on the other, was of dimensions corresponding to dimensions given in the table. On motion for an injunction to restrain the defendant from publishing or communicating the table or its contents to any one, it was held that, in compiling and retaining the table for his own purposes, the defendant had committed an abuse of the confidence ordinarily existing between a clerk and his employer, or a breach of the implied contract arising from that confidence, which is, that a servant shall not use, except for the purposes of service, the opportunities which that service gives him of gaining information ; and that the injunction should be granted. And in *Lamb v. Evans*, [1893] 1 Ch. 218, canvassers, who had been employed by the publisher of a directory, under an agreement which bound them to devote themselves in a particular district exclusively to obtaining from traders advertisements to be inserted in the directory, and to supply the blocks and materials necessary for producing such advertisements, proposed, at the expiration of their agreements, to assist a rival publication in procuring similar advertisements ; and it was

held by the Court of Appeal that they were not entitled to use for the purposes of any other publication the materials which, while in the plaintiff's employment, they had obtained for the purpose of his publication.

When the employe has entered into an agreement, prior to entering the service, not to divulge or use any secrets of the business the employer might make known to him, but subsequently leaves the plaintiff's employ and begins the manufacture of similar goods, using the plaintiff's secret processes, he will be restrained from so doing by injunction: *Fralich v. Despar*, 165 Pa. 24; S. C., 30 Atl. Rep. 521; *Peabody v. Norfolk*, 98 Mass. 452; *Salomon v. Hertz*, 40 N. J. Eq. 400; S. C., 2 Atl. Rep. 379.

In *State v. Julow*, 31 S. W. Rep. 781, the Supreme Court of Missouri, Division No. 2, has lately rendered a very inter-

**Prohibition
of Member-
ship in
Labor Unions** esting and valuable decision on one of the most important questions of the day,—that of the right of an employer to prohibit his employes from becoming or remaining members of labor unions.

This right exists at common law, as was ably demonstrated by Judge DALLAS, of the Circuit Court for the Eastern District of Pennsylvania, in *Platt v. Phila. & Reading R. R. Co.*, 65 Fed. Rep. 660; but it has been abrogated by statute in several states. In Missouri, the act of March 6, 1893, P. L. 187, § 1, provides that "no employer shall enter into any contract or agreement with any such employe to withdraw from any trade union, labor union or other lawful organization of which said employe may be a member, or requiring said employe to refrain from joining any trade union, labor union, or other lawful organization, or requiring any such employe to abstain from attending any meeting or assemblage of people called or held for lawful purposes, or shall by any means attempt to compel or coerce any employe into withdrawal from any lawful organization or society;" and § 3 makes a violation of the act punishable by fine and imprisonment. This, in the case mentioned above, was held to be unconstitutional, (1.) Because it is in contravention of the Fifth Amendment to the Constitution of the United States, and Art. 2, § 30, of the

Constitution of Missouri, providing that no person shall be deprived of life, liberty, or property, without due process of law; (2.) Because it is in violation of section 1 of the Fourteenth Amendment, providing that no state shall "deprive any person of life, liberty, or property, without due process of law; and (3.) Because it is special legislation, forbidden by art. 4, § 53, of the Missouri Constitution, in that "it does not relate to persons or things as a class,—to all workingmen, &c.,—but only to those who belong to some 'lawful organization or society,' evidently referring to a trade union, &c." The court further goes on to declare that the statute cannot be upheld on the assumption that it is a police regulation. "It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication, promote or tend to promote the public health, welfare, comfort, or safety; and if it did, the state would not be allowed, under the guise and pretense of a police regulation, to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment."

Similar statutes have been passed in other states. In California, it is enacted by the act of March 14, 1893, c. 149, P. L. 176, (Penal Code Cal. § 679,) that "any person or corporation within this state, or agent or officer on behalf of such person or corporation, who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor." The act of Idaho of March 6, 1893, P. L. 152, provides that "it shall be unlawful for any person, firm or corporation, to make or enter into any agreement, either oral or in writing, by the terms of which any employe of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall promise or agree not to become or continue a member of a labor organization;" and makes a violation of the act a misdemeanor, punishable by fine and imprisonment. The act of

Illinois of June 17, 1893, P. L. 98, enacts that "it shall be unlawful for any individual or member of any firm, or agent, officer or employe of any company or corporation, to prevent, or attempt to prevent, employes from forming, joining and belonging to any lawful labor organization, and any such individual, member, agent, officer, or employe that coerces or attempts to coerce employes by discharging or threatening to discharge [them] from their employ or the employ of any firm, company, or corporation, because of their connection with such lawful labor organization, shall be guilty of a misdemeanor," punishable by fine and imprisonment. By the act of Massachusetts of May 31, 1892, it is provided that "any person or corporation, or agent or officer on behalf of such person or corporation, who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be punished by a fine of not more than one hundred dollars." And the act of Ohio of April 14, 1892, P. L. 269, is exactly the same as the Illinois statute quoted above, word for word, the latter being evidently a transcript of the former. This Ohio act was held constitutional in *Davis v. State*, 30 Wkly. Law Bull. 342, because the court did not see its way clear to hold it unconstitutional; but all such acts, according to the Missouri case cited above, are unconstitutional.

According to the Supreme Court of Pennsylvania, a stockholder in a corporation, whose votes have been improperly rejected at a corporate election, is a proper party **Quo Warranto, Corporations, Parties** to institute proceedings of *quo warranto* against officers who claim to have been elected at that election, although, at the same election, he also was elected to an office, his title to which is undisputed: *Commonwealth v. Stevens*, 32 Atl. Rep. 111.

The Exchequer Division of Ireland, in *Boyd v. Great*

Northern Ry. Co., [1895] 2 Ir. R. 555, has recently decided, that when a person, (in this case a physician,) whose time is of pecuniary value, is, while driving along a public highway, detained for twenty minutes at a level crossing by the unreasonable and negligent delay of the employes of a railroad company in opening the gates at the crossing, the company will be liable in damages for the delay to the person so detained.

The Court of Errors and Appeals of New Jersey, in *Barber v. West Jersey Title & Guarantee Co.*, 32 Atl. Rep. 222, has

reversed the decree of the Court of Chancery, (49 N. J. Eq. 474; S. C., 24 Atl. Rep. 381,) holding, in opposition to the latter court, (1.) That while every person has the right of access to the public records of the county clerk's office, without the payment of any fees to the clerk, to examine any title in which he is interested, subject to reasonable rules and regulations, and a title insurance company has the same right of access to the records when employed to examine and guarantee the title to a particular piece of property, yet such a company has no right to occupy the clerk's office for the purpose of making an abstract of the records, in order to set up and establish a rival business to that of the clerk; and (2.) That as the right of access is thus limited, mandamus to enforce access, not injunction to prevent denial of access, is the proper remedy for a refusal to permit access to the records.

This decision is in decided conflict with the weight of authority: See 31 AM. L. REG. 769; 37 Cent. L. J. 395. The right of examining and abstracting the records, however, must be exercised under suitable regulations. "This right does not permit the register to be unduly annoyed by a large force, or by work at unseasonable hours, or by the monopoly of furniture, office room, or records, to the exclusion of other persons, or with his right to prescribe a reasonable use of the same:" *Day v. Button*, 96 Mich. 600; S. C., 56 N.W. Rep. 3.

The Supreme Court of Minnesota has lately held, in *Funk*

v. *St. Paul City Ry. Co.*, 63 N. W. Rep. 1099, that the provisions of Chapter 13 of the General Laws of Minnesota of 1887, which enacts that every railroad corporation owning and operating a railroad in that state shall be liable for damages sustained by an agent or servant by reason of the negligence of any other agent or servant, does not apply to a street-railway corporation, although its line is operated by cable.

When a large amount of rock has been excavated at one point in the course of a sewer, the extra cost of that excavation should not be assessed upon property situate between the rock and the outlet of the sewer, since the removal of the rock confers no benefit upon it: *Vreeland v. Mayor, &c., of City of Bayonne*, (Supreme Court of New Jersey,) 32 Atl. Rep. 68.

Since the acts of a sheriff in seizing, upon a writ of attachment, property of the debtor which is exempt, and refusing to deliver it on demand of the debtor, are, though unlawful, nevertheless done by him under color of his office, they constitute a breach of the condition of his bond, and the sureties thereon are liable: *Hursey v. Marty*, (Supreme Court of Minnesota,) 63 N. W. Rep. 1090.

An agreement between two creditors of a common debtor that each will share the loss, if any, which the other sustains on his claim against the debtor, is a "promise to answer for the debt, default or miscarriage of another," within the statute of frauds: *Spear v. Farmers' & Mechanics' Bank*, (Supreme Court of Illinois,) 41 N. E. Rep. 164, affirming 49 Ill. App. 509.

It seems to be the prevailing opinion in the United States, that the mere signing of what purports to be an act of the legislature by the presiding officers of the two houses thereof is of such mighty force and efficacy, as to completely abrogate all other constitutional requirements as to the manner of its passage. One very glar-

ing instance of this *in cortice* tendency was noticed in this department last month, when a statute, which the journals proved conclusively never to have passed, was held valid nevertheless, because signed by the presiding officers of the legislature: *Carr v. Coke*, (N. C.) 22 S. E. Rep. 16; *Wyatt v. Wheeler & Wilson Mfg. Co.* (N. C.) 22 S. E. Rep. 120. [See 2 AM. L. REG. & REV. (N. S.) 441.] Now the Supreme Court of Indiana comes to the front with the astounding proposition, that it is not admissible to prove from the journals that an act, duly authenticated and signed by the governor, was in fact passed by the legislature, and sent to him, within the two days next preceding the final adjournment of the legislature, in violation of Art. V, § 14, of the state constitution: *Western Union Tel. Co. v. Taggart*, 40 N. E. Rep. 1050. What makes this decision all the more remarkable is that it does not appear that the signatures of the presiding officers authenticated any other date, so as to make the act clearly valid on its face; and the signature of the governor could not do this, as that was dated within the two days. Therefore, if this decision be correct, the constitutional provision is nugatory, unless the presiding officers, or the governor, refuse to sign an act passed within the time limited—a refusal of which they will never be guilty, if they wish the act passed. And further, it is not to be even suspected that the constitution intended the lodging of such an arbitrary power in the hands of these persons. If these North Carolina and Indiana decisions are correct, constitutional restrictions on the mode of passing statutes are a mere blind, intended to amuse the people; and may be discarded with the greatest ease whenever desired. It is respectfully submitted, that wherever one party is overwhelmingly in power, as in Pennsylvania or Texas, that the bills be simply drawn up in committee, presented to the officers to sign, and to the governor for approval. It will effect a vast saving of time and trouble, and will in no wise invalidate the acts themselves. Of what use is a first, second or third reading, if the want of it cannot be alleged to invalidate the act, when once signed? No imaginary consequences of a step behind the scenes can possibly have the evil consequences of a refusal to

do so ; and the legislative history of to-day shows clearly that these latter evils are now growing with frightful rapidity. It is the duty of the courts to check rather than foster them.

According to a recent decision of the Supreme Court of Louisiana, the importer of shooks or staves already bent so as **Taxation,** to form a barrel, of barrel heads ready for inser-
Exemption, tion, and of hoops ready to be driven, is not to be
Manufacturer deemed a manufacturer of a barrel, merely because he substituted machinery for the usual hand labor of setting up the staves in barrel shape, introducing the prepared headings, and driving on the hoops, first subjecting the staves and other material to a heating process ; and the machinery and property thus employed are not exempt from taxation under Article 207 of the constitution of that state: *Brooklyn Cooperage Co. v. City of New Orleans*, 17 So. Rep. 804.

One of the most hopeful signs in the present social crisis is the general willingness of the courts to use the power of the

Trade Unions, law to curb and punish the effrontery of the labor unions. One of the most important cases in this **Liability for Procuring Discharge of Employee** regard that has come before the courts in late years, equally as important in its own sphere as the Debs Case was in its province, has been recently decided by the Court of Appeal of England. This is the case of *Flood v. Jackson*, [1895] 2 Q. B. 21, in which the broad principles, that an action will lie against a person who maliciously induces a master to discharge a servant from his employment, if injury ensues thereby to the servant, even though the discharge by the master does not constitute a breach of the contract of employment, and that an action will also lie for maliciously inducing a person to abstain from entering into a contract to employ another, if injury ensues to the latter thereby, were applied to members of a labor union who induced an employer to discharge certain of his employees. The plaintiffs were shipwrights, employed by the day, (and consequently liable to discharge at the end of any day,) by a firm of ship repairers,

to execute repairs to the woodwork of a ship. Some iron-workers, who were members of a trade union, were employed on the ironwork of the ship, and they objected to working in the same yard with the plaintiffs, upon the ground that the latter had previously worked at ironwork on ships in another yard. The district delegate of the union was called in by the ironworkers, and he informed the employers that all the iron-workers in the society would leave off work unless the plaintiffs were discharged that day, and that the ironworkers would leave off work in any other yard in which the plaintiffs were employed, adding that they were doing their best to stop the practice of shipwrights being employed on ironwork. There was also some evidence that the delegate did this to punish the plaintiffs for their previous conduct in working upon iron. In consequence of that threat the plaintiffs were discharged at the end of the day. They then brought an action against the district delegate, the chairman, and the general secretary of the union, for maliciously, and with intent to injure the plaintiffs, inducing the employers to discharge the plaintiffs, and to refuse to engage them again. The jury found that the district delegate acted maliciously, and that the plaintiffs had been injured thereby, but that the two other defendants did not authorize his acts. It was accordingly held by the Court of Appeal, (1.) That the action was maintainable against the district delegate, although the discharge of the plaintiffs, and the refusal to re-engage them, involved no breach of contract on the part of the employers; but (2.) That the district delegate was not the agent or servant of the members of the union, so as to render each member liable for his acts, and that, therefore, the chairman and general secretary were not, merely by reason of their being members of the union, liable in the action.

It is well settled law that an action will lie on behalf of either employer or employe against a third person who maliciously induces the other party to break his contract, either by persuading the employe to leave his employment, or inducing the employer to discharge the employe, provided that damage results from that breach: *Bowen v. Hall*, 6 Q. B. D. 333; *Chipley v. Atkinson*, 23 Fla. 206; *Walker v. Cronin*,

107 Mass. 555. This has been repeatedly applied to the case of a strike or boycott urged against an employer, or a tradesman. In *Temperton v. Russell*, [1893] 1 Q. B. 715, the defendants were members of a joint committee of three trade unions connected with the building trade in Hull. A firm of builders there refused to obey certain rules laid down by the unions with regard to building operations, and the unions sought to compel them to do so by preventing the supply of building materials to them. In pursuance of this object, they requested the plaintiff, a master mason and builder in Hull, who supplied building materials to the firm, to cease to supply them with such materials, but he refused to comply. Thereupon, with the object of injuring the plaintiff in his business, in order to compel him to comply with their request, the defendants induced persons who, to the knowledge of the defendants, had entered into contracts with the plaintiff for the supply of materials, to break their contracts, and not to enter into further contracts with the plaintiff, by threatening that the workmen would be withdrawn from their employ. The plaintiff sustained damages in consequence of such breaches of contract, and of the refusal of such persons to enter into contracts with him. The Court of Appeal held, that the right of action for maliciously procuring a breach of contract, is not confined to contracts in the nature of contracts for personal service; and that an action was maintainable by the plaintiff against the defendants for maliciously procuring such breaches of contract, and also for maliciously conspiring together to injure him by preventing persons from entering into contracts with him. But there seems to be but one case besides that just decided in England, in which a member of a trade union who procures the discharge of a non-union workman has been held liable to the latter. This is *Lucke v. Clothing Cutters' & Trimmers' Assembly*, No. 7057, 77 Md. 396; S. C., 26 Atl. Rep. 505. In that case the action was brought by the plaintiff against the whole assembly, by order of which his employers were notified to discharge him. He was a faithful, skilful employe, and gave satisfaction to his employers in every way; but owing to the fact that he was a

non-union man, the members of the union objected to his employment, and, in spite of the fact that he applied for admission to the union, that body sent to the firm the following notice, signed by its secretary :

“MESSRS. ROSENFELD BROS.:

GENTLEMEN :—Clothing Cutters and Trimmers L. A. 7507, K. of L., do herewith desire to inform you, that in case the non-union man whom you have in your employ is any longer retained, we will be compelled to notify all labor organizations of the city, that your house is a non-union one.”

Upon receiving this notice, the firm immediately notified the plaintiff that he would have to go, and did in fact discharge him, at the same time notifying the assembly of their action. After his discharge the plaintiff had great difficulty in obtaining work, and when, after some months, he secured another position, it was at a smaller salary than he had received before his discharge. It was also proved that the natural result of a failure on the part of his employers to discharge the plaintiff would have been the withdrawal from them of the patronage of the labor unions, and the ordering out of the union labor then employed by them, which would have resulted in great loss. Under these circumstances, the court held (1.) That the interference of the union was in law malicious and unquestionably wrongful ; (2.) That the fact that the law authorized the formation of corporations like the defendant did not confer upon them the power to demand the discharge of the plaintiff by the means adopted, the law sanctioning such formation “to promote the well-being of their every-day life, and for mutual assistance in securing the most favorable conditions for the labor of their members and as beneficial societies,” (Code Md., Art. 23, § 37,) which certainly does not mean that that promotion is to be secured by making war upon the non-union laboring man, or by any illegal interference with his rights and privileges ; and (3.) That the plaintiff was therefore entitled to recover from the union the damages sustained by him in consequence of its actions.

The Court of Criminal Appeals of Texas has recently held, in *Barton v. State*, 31 S. W. Rep. 671, that when the jury, in fixing the term of imprisonment, agree that each ^{Verdict,} juror shall write his verdict on a slip of paper, ^{Impeachment,} and that the sum total divided by twelve shall ^{Average} be the term, a new trial will not be granted, if the term as fixed varies from the quotient obtained.

This case follows *Pruitt v. State*, 30 Tex. Cr. Rep. 156; S. C., 16 S. W. Rep. 773, where the same ruling was made in regard to a verdict obtained by first dividing the sum of the juror's opinion as to the length of the term of imprisonment by twelve, which gave five years and seven months, and then compromising on five years. In the case in hand the quotient was three years and ten months, and the term was fixed at four years. But the mere fact that the quotient obtained is not exactly adopted does not seem to afford any good reason for making such cases an exception to the general rule. It is clearly used as a basis for computation, and being illegal itself, ought to vitiate any calculation made upon it.